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THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES

The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, and statutory representation and maintenance of corporations, is to deal with members of the bar, exclusively.

The Supreme Court of the United States has held constitutional the State of Washington "Compensating Tax," imposed for the privilege of using in Washington tangible personal property upon which a sales tax has not been paid. The decision, rendered in *Henneford et al. v. Silas Mason Co., Inc., et al.*, (see page 401), is of interest in other states having a similar tax, usually referred to as a "Use Tax," such as California, Colorado, Iowa, Ohio and Oklahoma. In Kansas, a "Compensating Tax," imposed by House Bill No. 619, Laws of 1937, becomes effective June 1, 1937, in Wyoming, Chapter 118, Laws of 1937, provides for a "Use Tax," also in effect on June 1, 1937, while in Utah, a "Use Tax," imposed by Senate Bill No. 185, Laws of 1937, will become operative July 1, 1937.

The recent changes in the Delaware Franchise Tax rates will not be reflected in the bills which will be rendered in 1937, but will first affect the taxes to be paid in 1938.

Foreign corporations in New Jersey will not be required to file a Franchise Tax Return on or before the first Tuesday in May, 1937. A Franchise Tax Return and a payment of the tax will, however, be required on or before August 15, 1937, under Chapter 25, Laws of 1937.

Raymond Kenwaw

President.

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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve The Journal in a permanent file, a special and very convenient form of binder will be furnished at cost ($1.50).

Contents for May

Longevity of Corporations

Perhaps the oldest existing corporations are governmental bodies. The City of London's charter is presumed to have existed from time immemorial. Of it, Blackstone says: "Though the members thereof can show no legal charter of incorporation, yet in cases of such antiquity, it is presumed to have existed, and to have been lost or destroyed."

There have been business corporations which have possessed such remarkable vitality that they have been found in existence two hundred and fifty years after their incorporation. For instance, the East India Company, chartered in 1600 with a capital of £68,000, was still active in India in 1850. That Canada also may point to a company which has been active within its borders for two centuries and a half is indicated in a letter recently received from the British Columbia counsel of the company. It reads:

> "'The Governor and Company of Adventurers of England, trading into Hudson's Bay' (commonly known as the Hudson's Bay Company) was incorporated by special Royal Charter in 1670, and has continuously and successfully operated since that time in Northwestern America.
>
> "The company still operates extensively in the Canadian North-west, its operations consisting of the maintenance of trading posts in the North, and of Departmental stores in most of the large Cities west of the Great Lakes, including those of Winnipeg, Regina, Edmonton, Calgary, Vancouver, etc. As solicitors for the company, we are able to state that it is still most active throughout the whole of Western Canada."

Organizers of present day companies may look forward to equally long periods of activity on the part of their own organizations, for, in the majority of states a "perpetual existence" is granted to newly incorporated companies desiring it.

A number of states, however, place a definite limit upon the years which their corporations may attain. In eight such states, the limit is fifty years, in four it is twenty years, while in others corporate existence may come to an end when twenty-five, thirty, forty, ninety-nine or one hundred years have been reached.

Domestic Corporations

British Columbia.

Assets of dissolved corporation, reverting to the Crown, held recoverable upon reinstatement of corporation. The Attorney-General of British Columbia sought to obtain a declaration, on behalf of the Crown, that certain funds, deposited in defendant bank to the credit of a company which had been dissolved for failure to make returns, were the property of the Crown, even though the company had been reinstated. After an examination of the applicable statutes, (secs. 199 and 200 of the Companies Act), the British Columbia Court of Appeal concluded that, while upon the dissolution, the funds became vested "for the time being at all events, if not absolutely," in the Crown, such vesting was subject to termination when the company obtained an order restoring it to the Register. "I think it is clear," remarked the court, "from the words in ss. 199 and 200 of the Companies Act that, by necessary implication the nature of the enactment and the language employed, it was clearly intended that the Crown should restore this money to the revived company." *A.-G. B.C. v. Royal Bk. et al.*, (1937) 1 D.L.R. 637. H. A. Maclean, for appellant. D. M. Gordon, for respondent.

Delaware.

Common stock is not a "special" stock which is subject to redemption under section 27. The charter of defendant company contained a provision that, under certain circumstances, "the common stock shall be subject to call and redemption as an entirety on sixty days notice at the option of the corporation." Complainant sought to restrain the defendant from carrying out a call and redemption of all of its outstanding common stock. The Court of Chancery, New Castle County, orders the issuance of a preliminary injunction, holding that the common stock of defendant could not be regarded as a "special" stock under section 27, General Corporation Law, so as to be subject to redemption, it having been conceded by the defendant that there was no authority anywhere in the act for the call and redemption of common stock as such. *Mason B. Starring, Jr. v. American Hair and Felt Company,* Court of Chancery, New Castle County, March 19, 1937. Commerce Clearing House Court Decisions Reporting Service Requisition No. 174602. Aaron Finger, of Richards, Layton & Finger, of Wilmington, and Malcolm Mecartney of Chicago, Illinois, for the complainant. Hugh M. Morris and Edwin D. Steel, Jr., of Wilmington, and Louis Quarles, of Lines, Spooner & Quarles, of Milwaukee, Wisconsin, of counsel, for the defendant.

Florida.

If defendants improperly refuse to issue stock certificates to plaintiffs, is actual possession of certificates necessary to enforce plaintiffs' rights in equity? Where plaintiffs sought to enforce rights

under a contract entered into prior to the formation of defendant corporation, under which plaintiffs were to have received stock of defendant corporation, the Supreme Court of Florida, called attention to the equitable maxim that "Equity may regard that as done which ought to have been done," and indicated that relief might be given by a court of equity in the same manner as if the stock had actually been issued." *Mills Development Corporation v. Shipp & Head, Inc.*, 171 So. 533. Shutts & Bowen, Crate D. Bowen and Charles A. Carroll of Miami, for appellant. W. H. Burwell and Shipp, Evans & Kline of Miami, for appellee.

Indiana.

Action involving fixing of value of stock of dissenting stockholders under a consolidation. This case presents an instance where the Supreme Court of Indiana was reviewing a finding of the lower court as to the value of the stock of appellee stockholders, who had not assented to a consolidation involving their company. The evidence as to value had been submitted to the lower court, upon agreement, without the intervention of a jury. The finding of the lower court appearing justified, it was not disturbed, stress being laid upon the fact that, although the evidence as to value was conflicting, that most favorable to the dissenting stockholders supported the value fixed by the lower court. *Republic Finance & Investment Co. et al. v. Fenstermaker et al.*, 6 N. E. (2d) 541. Rappaport & Kipp and Harold F. Kealing of Indianapolis, for appellants. Matson, Ross, McCord & Clifford, James A. Ross and Austin V. Clifford of Indianapolis, for appellees.

Iowa.

Stockholders, acting in good faith, held not liable to creditors for dividends paid when corporation was solvent, although capital stock was impaired. The Supreme Court of Iowa holds in a case where stockholders of a corporation were sued because of alleged wrongful payment of dividends to them out of corporate funds to the detriment of creditors, that a recovery could not be had where the evidence failed to show the corporation was insolvent when the dividends were paid, although the capital stock was greatly impaired, and where, also, it was not established that the defendant stockholders acted in bad faith, or knew the dividends received by them were wrongfully paid. The court observed that the statutes relating to the diversion of corporate funds (Secs. 8377 and 8378 of the Code of 1931), "create a liability to defrauded creditors *who have been injured* by the acts of the corporation. If a corporation is perfectly solvent when a person becomes a creditor, they create no liability, although the corporation may thereafter become insolvent. Miller v. Bradish, 69 Iowa, 278, 28 N. W. 594; Benge Bros. v. Eppard, 110 Iowa, 86, 81 N. W. 183. In order to establish a liability against the stockholders, it must appear that the plaintiff both sustained an

injury as a result of the acts complained of, and that the dividends paid were not received in good faith by such stockholders. Under the authority of the foregoing cases, no injury results if the corporation had sufficient assets on hand to meet its indebtedness." *Bates, Superintendent of Banking v. Brooks et al.*, 270 N. W. 867. H. F. Kuhlmeier and Mohland, Kuhlmeier, Fischer and Cray, of Burlington, and Edw. L. O'Connor, Atty. General, for appellant. Clark, Hale & Plock and Ben P. Poor of Burlington, for appellees.

Kansas.

Is fact that entire authorized capital had not been subscribed a defense in suit on unpaid subscription? The Supreme Court of Kansas, in an action against defendant stockholder for an unpaid subscription for stock in a corporation for which plaintiff became trustee upon its insolvency, holds that, as the statutes of Kansas do not require the entire capital of a corporation to be paid as a condition precedent to the beginning of business, it was not valid as a defense for defendant to show that the entire authorized capital had not been subscribed. A judgment for plaintiff in the lower court was affirmed. *Norton v. Lamb*, 62 P. (2d) 1311. David Ritchie and C. B. Dodge, Jr., of Salina, for appellant. John H. Wilson of Salina, for appellee.

Maryland.

Action involving stock appraisal carried to the Court of Appeals. Eight interrelated corporations had been consolidated. Certain dissenting stockholders availed themselves of their rights to an appraisal of the fair value of their stock, commissioners being appointed by the Chancellor for that purpose. Both the stockholders and the consolidated corporation disagreeing with the values set by the commissioners, an appeal to the Court of Appeals of Maryland followed. That court perceived no sufficient ground to set aside the valuations made. The commissioners had, however, added interest to the value fixed for the stock from the day of the consolidation. The court held this to be error and that the dissenting stockholders were not entitled to interest prior to the time the award was decreed, saying: "The amount of the award is not ascertained until confirmation by the chancellor or, in case of appeal, by the Court of Appeals and the corporation has thirty days in which to pay after confirmation either by the chancellor or by the Appellate Court. During these thirty days the stockholder cannot enforce the collection of the amount of the award, and must transfer his stock when paid. All the stockholder is entitled to receive is the value of his stock as represented by the amount of the award. He is not entitled to receive more in the form of interest until after the expiration of the thirty-day period because the statute expressly provides that the *amount* of the *award* shall be the lien, which inferentially excludes any interest from accruing during the period

before the amount of the award becomes a decree. Since the stockholder has no enforceable right to the money until the corporation has withheld or deprived the stockholder of what is due him for thirty days after the confirmation, there is no reason nor principle for interest to be chargeable until the corporation is in default. So, the Commission exceeded their power when, after determining the fair value of the stock, they added to this value interest from the day of the merger or consolidation. It follows that interest must be disallowed, but the award will be confirmed." *American General Corporation v. Camp et al.*, Court of Appeals of Maryland, February 17, 1937; 190 A. 225. Commerce Clearing House Court Decisions Reporting Service Requisition No. 173286.

Michigan.

"Paid-up capital," for the purpose of privilege fee, is to be taken as of December 31. A corporation filing its annual report for privilege tax purposes on August 29, 1935, showed its paid-up capital as of that date. A reduction in capitalization having been effected by the company on the previous day by amendment, the tax commission refused to accept a privilege fee based upon the reduced amount, claiming a fee due based upon the paid-up capital as it stood on December 31, 1934. The Supreme Court of Michigan upholds the commission, indicating that while the date as of which the computation is to be made is not fixed by statute, it was the intention of the Legislature that paid-up capital be reported as of December 31st next preceding, in view of specific requirements that information to be supplied in the report be given as of the December 31 preceding its filing. *Appeal of Newton Packing Co.*,* 271 N. W. 710. Albert H. & Henry Veeder of Chicago, Ill. (Maurice Weigle, of Chicago, Ill., of counsel), for appellant. David H. Crowley, Atty. Gen., and Edmund Shepherd and James W. Williams, Asst. Attys. Gen. (Alice E. Alexander of Lansing, of counsel), for appellee.

* The full text of this opinion is printed in **The Corporation Tax Service, Michigan volume, page 242.**

New Jersey.

A stockholder who sold his stock to his corporation, which was later dissolved, may recover the balance of purchase price from a new corporation having the same personnel, formed to carry on the business of his corporation. Complainant stockholder sold to his corporation certain shares of stock, to be paid for in installments. The balance due was carried on the books of the corporation as a liability. The corporation was subsequently dissolved and its assets taken over by a corporation of the same name, which complainant sues for the balance remaining unpaid, joining as defendants the directors of the old corporation, who had become incorporators of the new company. There were no rights of other creditors involved. The Court of Errors and Appeals of New Jersey adopts a Vice

Chancellor's ruling that complainant is entitled to recover under the circumstances, the old corporation having the right to purchase its corporate stock, and the directors, upon its dissolution, becoming trustees under the statutes for the benefit of complainant as a creditor and the other stockholders. The court said: "The property and assets of the old company were transferred to the new company and it assumed the liabilities of the old company. The defendant corporation admits this assumption of liability in its answer and there is ample authority to support the proposition that since the new company took over the assets of the old company for the purpose of carrying on its business and without change in the personnel of the corporation it is liable for the payment of the debts of the old concern." *Fox v. Radel Leather Mfg. Co., et al.*, 189 A. 366. McCarter & English of Newark, for appellants. Harry Krieger of Newark, for respondent.

New York.

Statutes of limitation applied. In a representative action in equity, brought by a stockholder for the benefit of his corporation, the New York Supreme Court, Appellate Division, First Department, remarks that "the plaintiff should not have a greater period of time within which to bring his various causes of action than his corporation would have. The question of what statute of limitations is applicable, therefore, is to be determined as if the corporation itself had brought suit." Several causes of action being before the court, it applies the ten-year equity statute of limitations in those instances where, from the nature of alleged wrongful acts of defendants, an action at law would not be as complete or effective as the remedy in equity. In those instances where defendants were merely charged with acts for which there was a complete and adequate remedy at law, it was pointed out that they may not be sued in equity merely to enlarge the time within which the action might be instituted, and, as to them the six-year statute of limitations, available at law, was held properly applicable. *Potter v. Walker et al.*, 293 N. Y. S. 161. A. Lincoln Lavine, of counsel (Howard W. Ameli and A. Lincoln Lavine, attorneys) for appellants. Frederick H. Wood, of counsel (Alfred McCormack, George M. Billings and George G. Tyler with him on the brief; Cravath, deGersdorff, Swaine & Wood, attorneys) for respondents Walker, Armsby, Hayes and Marston. David Paine, of counsel (C. M. Tappen and George Koegler with him on the brief; Kellogg, Emery & Inness-Brown, attorneys) for respondent Paul H. Harwood. George L. Trumbull, of counsel (Randolph H. Guthrie and Donald Kehl with him on the brief; Mudge, Stern, Williams & Tucker, attorneys) for respondent Edward H. Tinker.

An incorporator of a religious association, formed under the Stock Corporation Law, who made no subscription payments and never received a certificate of stock, may not maintain a representative action as a stockholder. Plaintiff and two others at first endeavored

to file a certificate of incorporation of a religious association with the Secretary of State under the Stock Corporation Law which clearly showed the proposed company was not to be a stock corporation. After a denial of its filing by that official, a new certificate was prepared and filed which showed subscriptions for stock by plaintiff and the others. Certificates were prepared but were never torn from the stock book and given to the subscribers, no payments having ever been made or being intended to be made. The question presented was whether, under such circumstances, plaintiff might maintain a representative action as a stockholder for the purpose of setting aside certain transfers of property by the corporation. The Supreme Court, Special Term, Erie County, denied plaintiff's right to maintain the action, upon finding that no consideration was paid for the stock, and held that it would have been unlawful for the corporation to issue the stock under such circumstances, saying: "A court of equity is not so shackled that, because of mere form, it must treat plaintiff's rights in the association as those of a stockholder in a trading company. It may view the association as it was intended to be, and actually is, a religious society. Plaintiff never had any rights in it other than those possessed by any member of such an organization. The stock itself gave him no rights whatever." This holding was affirmed by the Supreme Court, Appellate Division, Fourth Department. *Kittinger v. Churchill et al.*, 292 N. Y. S. 35 and 292 N. Y. S. 51. F. Paul Norton of Kenmore, for appellant. Coatsworth & Diebold (Charles Diebold, Jr., of counsel) of Buffalo, for respondents.

Rhode Island.

A corporation, which is merely a continuation of another corporation, which absorbs the business and property of the latter, may be held liable for the latter's debts. Plaintiff brought this action against two corporations, one of which had purchased certain meats from plaintiff. The lower court had rendered judgment against both defendants. The defendant corporation which had not been a party to the purchase appealed. The Supreme Court of Rhode Island, finding that shortly after the delivery of the goods the purchasing corporation had ceased to occupy the premises where the meat was later sold by the appealing defendant which had, without a formal sale, stepped into the position occupied by the other defendant, held a judgment against both defendants was proper. "The evidence," observed the court, "does not show a consolidation or merger of the corporations involved, in the sense those terms are generally employed in the law." "It is well settled that ordinarily a corporation, if there is no actual consolidation or merger, may succeed to the property and business of another corporation, by purchase or otherwise, without becoming liable for the latter's debts and obligations in the absence of fraud, contract or statute to the contrary." The court noted an exception to this rule, which it found applicable in this

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case, the exception being that where a new corporation is merely a continuation or a reorganization of another, and the business or property of the old corporation has practically been absorbed by the new, the latter is responsible for the debts or liabilities of the former. *Cranston Dressed Meat Co., Inc. v. Packers Outlet Co., Inc., et al.*, 190 A. 29. Quinn, Kernan & Quinn and Michael De Ciantis of Providence, for plaintiff. George H. Pickar, Edward Miller and Samuel Miller of Boston, for defendants.

Foreign Corporations

Alabama.

Sale of marble, involving installation by seller, held "doing business." The Alabama Supreme Court follows its finding in Gray-Knox Marble Co. v. Times Building Company, 225 Ala. 554, 144 So. 29, (The Corporation Journal, December, 1932, page 275), in holding that a corporation was doing business in Alabama where there was a sale of marble which included, as an inseparable part thereof, the installation of the marble by the seller. *Times Building Company for the use of Gray-Knox Marble Company v. Cline et al.,** Alabama Supreme Court, February 18, 1937. Commerce Clearing House Court Decisions Reporting Service Requisition No. 172493.

* The full text of this opinion is printed in **The Corporation Tax Service**, Alabama volume, page 503.

Indiana-Michigan.

Where a licensed foreign corporation neglects to maintain a statutory agent and service of process is made upon the Secretary of State as statutory agent under such circumstances, the validity of a judgment based upon such service is not affected by failure of the corporation to receive notice of service from the Secretary of State. This was an action in a Michigan court on a judgment which had been obtained by the plaintiff against the defendant corporation in an Indiana court in an action on a contract. The defendant company, although licensed to do business in Indiana, had failed to maintain a resident agent in that state as required by the Indiana law. As a result, service of process in the Indiana action had been made upon the secretary of state of Indiana as provided by statute. The copy of the process forwarded by that official to the company had failed to reach the defendant. The trial judge in the Michigan action held this a jurisdictional defect which rendered the Indiana judgment void. The Michigan Supreme Court reversed this decision and remanded the case for the entry of a judgment, remarking: "While we are loath to uphold the validity of a default judgment obtained through the mistake, neglect or disregard of defendant's agent, the secretary of state, we are nevertheless impressed with the fact that the statute makes the secretary of state the agent of defendant and states that 'any service so had on the secretary of state * * * shall

be of the same legal force and validity as if served on the corporation itself.' Under the circumstances, notice to the corporation is not a jurisdictional defect. While we appreciate the practical difficulties that may arise, there is nothing unconstitutional in the law and any desired changes must be left to the legislature. Foreign corporations may avoid these undesirable results by maintaining their own agents upon whom service of process can be made in accordance with the law of the foreign State." *Rarden et al. v. R. D. Baker Company*, 271 N. W. 712, Michigan Supreme Court, March 1, 1937. Commerce Clearing House Court Decisions Reporting Service Requisition No. 173047. Cooper, Royse, Gambill & Crawford, of Terre Haute, Ind., (Douglas, Barbour, Desenberg & Purdy of Detroit, of counsel), for appellants. Orph C. Holmes of Ferndale (Calvin N. Smith of Ferndale, of counsel), for appellee.

Oklahoma.

Statute permitting inspection of foreign corporation's books and papers in proceedings involving their internal management, may not be invoked in ad valorem tax proceedings. The petitioner, a Delaware corporation, seeks to prevent respondent county judge in the execution of the latter's order to present its books and papers for inspection in the county court in a tax ferret proceeding involving the assessment of the corporation's property for ad valorem tax purposes. The purported authority for the order was Section 136, Oklahoma Statutes, 1931, which provided for the production of a foreign corporation's books and papers, upon judicial order, in proceedings in courts of record. The Supreme Court of Oklahoma, while not doubting the constitutionality of Section 136, holds that it cannot be invoked in a tax ferret proceeding, believing "that the Legislature intended the statute to apply only in proceedings arising under the state's visitorial and inquisitional powers in connection with the internal management and control of foreign corporations doing business here." *Gilmer Oil Co. v. Ross, Judge,** 62 P. (2d) 76. Champion, Champion & Fischl of Ardmore, for petitioner. Robert W. Richards, Co. Atty., of Ardmore, and R. W. Stoutz, Associate Counsel, of Oklahoma City, for respondent.

* The full text of this opinion is printed in **The Corporation Tax Service, Oklahoma volume, page 2622.**

Taxation

Kentucky.

Claimant for refund of Gross Receipts Tax, under appropriation made by legislature, must comply strictly with statutory provisions in order to obtain refund. Chapter 430, Laws of 1936, authorized a recovery of taxes paid under the Gross Receipts Tax Law of 1930, (Chapter 149, Acts of 1930), under certain conditions, one of which was the presentation of claim and, where necessary, institution of

suit, within sixty days after February 25, 1937. The claimant having delayed to present his claim until after the expiration of the sixty-day period, a judgment denying recovery was affirmed. *Hurry Up Broadway Company v. Shannon,** Kentucky Court of Appeals, February 19, 1937; 102 S. W. (2d) 30. Commerce Clearing House Court Decisions Reporting Service Requisition No. 172689. John M. Bull, Jr., of Frankfort, for appellant. B. M. Vincent, Atty. Gen., and J. W. Jones, Asst. Atty. Gen., for appellee.

NOTE: *A further opportunity to recover such taxes has been afforded taxpayers who made payments under the Gross Receipts Tax Law of 1930, through the enactment of House Bill No. 14, Fourth Special Session, 1936, approved January 18, 1937, under which October 18, 1937, is the final date for the filing of claims and suits for such refunds.*

* The full text of this opinion is printed in **The Corporation Tax Service**, Kentucky volume, page 7620. The full text of House Bill No. 14, mentioned above, is printed on page 9365.

New York.

Does a taxable transfer result where shares owned by a consolidating company become vested in the new consolidated corporation by operation of law? The Supreme Court, Appellate Division, Third Department, holds that the stock transfer tax imposed by section 270 of the Tax Law does not apply to a transfer occurring merely by operation of law where shares owned by a company consolidating with another corporation become vested in the new corporated entity created out of the component organizations. *Electric Bond & Share Co. v. State,** 293 N. Y. S. 175. John J. Bennett, Jr., Atty. Gen., for the State. Alex M. Hamburg, of New York City, for claimant-respondent.

* The full text of this opinion is printed in **The Corporation Tax Service**, New York volume, page 4511.

New York City Gross Receipts tax held not applicable to a domestic corporation engaged in foreign commerce. A New York corporation, with its principal place of business in New York City, was the soliciting agent for freight and passenger business and the receipt and transmission of money by letter or cable for the benefit of the Gdynia American Shipping Lines, Ltd., a foreign corporation engaged in foreign commerce, receiving commissions and fees in return for its services. The New York company contended that the New York City Gross Receipts Taxes, imposed by Local Laws No. 9 and 17 of 1934, for the privilege of carrying on business or commercial activity within the city, was a burden on foreign commerce and therefore unconstitutional as applied to it. The Appellate Division, First Department, agreed with this contention, holding invalid an assessment which had been made. *Gdynia America Line, Inc. v. Taylor et al.*, New York Supreme Court, Appellate Division, First Department, February 26, 1937; 293 N. Y. S. 613. Commerce Clear-

ing House Court Decisions Reporting Service Requisition No. 172858. H. H. Nordlinger, of counsel (Jacob I. Charney, on the brief; Nordlinger, Riegelman & Cooper, attorneys) for petitioner. Frank J. Derrick, of counsel (Oscar S. Cox and Robert Granville Burke, on the brief; Paul Windels, corporation counsel, attorney) for respondents.*

* The full text of this opinion is printed in **The Corporation Tax Service**, New York volume, page 5921.

Washington.

The Supreme Court of the United States holds a "use" or "compensating" tax constitutional. Plaintiffs had brought certain property into the State of Washington which had been purchased at retail in other states. The point at issue was the validity of the 2% use or compensating tax imposed by Title IV of Chapter 180, Laws of Washington, 1935, as applied to this property. The Supreme Court of the United States, in holding the tax constitutional, and reversing the United States District Court, Eastern District of Washington, 15 F. Supp. 958, (The Corporation Journal, November, 1936, page 258), observed: "Things acquired or transported in interstate commerce may be subjected to a property tax, non-discriminatory in its operation, when they have become a part of the common mass of property within the state of destination." "A tax upon the privilege of use or storage when the chattel used or stored has ceased to be in transit is now an impost so common that its validity has been withdrawn from the area of debate." The court stressed the fact that the tax was not upon the operations of interstate commerce, but upon the privilege of use after commerce is at an end. It found that "equality is the theme that runs through all sections of the statute," noting that there was an offset if another use or sales tax had been paid upon the property, remarking: "When the account is made up, the stranger from afar is subject to no greater burdens as a consequence of ownership than the dweller within the gates." *Gregg Dyeing Co. v. Query*, 286 U. S. 472, (The Corporation Journal, December, 1935, page 68), the most recent case in which a tax closely resembling the Washington tax was before the court, was cited and followed. *Henneford et al. v. Silas Mason Company, Inc., et al.*,* Supreme Court of the United States, March 29, 1937, Docket No. 418, October Term, 1936. Commerce Clearing House Court Decisions Reporting Service Requisition No. 174739.

* The full text of this opinion is printed in **The Corporation Tax Service**, Washington volume, page 7310.

Appealed to The Supreme Court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

ALABAMA. Docket No. 570. *Southern Natural Gas Corporation et al. v. The State of Alabama,* 170 So. 178. (The Corporation Journal, October, 1936, page 232.) Validity of franchise tax upon qualified foreign corporation engaged in interstate activities, with principal office in Alabama. **Appeal filed December 16, 1936. Probable jurisdiction noted January 4, 1937. Argued March 10, 1937. Judgment affirmed April 26, 1937. Opinion by Chief Justice Hughes.**

LOUISIANA. Docket No. 652. *Great Atlantic & Pacific Tea Company v. Grosjean, Supervisor of Public Accounts et al.,* 16 F. Supp. 499, (The Corporation Journal, November, 1936, page 256.) Constitutionality of Louisiana Chain Store Tax. **Appeal filed January 14, 1937. Probable jurisdiction noted February 1, 1937. Argued March 30 and 31, 1937.**

MISSOURI. No. 712. *Phillips Pipe Line Company v. The State of Missouri,* 97 S. W. (2d) 109. (The Corporation Journal, January, 1937, page 303.) Validity of franchise tax as applied to activities of a pipeline company. **Appeal filed February 5, 1937. Further consideration of the question of jurisdiction postponed to the hearing of the case on the merits, March 1, 1937. On motion of the Attorney General of the State of Missouri this case is continued to the October Term 1937, March 29, 1937.**

MISSOURI. Docket No. 749. *The Ajax Pipe Line Company v. Jesse E. Smith, Collector of Revenue of Greene County, Missouri, et al.,* 87 F. (2d) 567. (The Corporation Journal, April, 1937, pages 361 and 375.) Taxation in Missouri of deposits in a New York bank, belonging to a Delaware corporation with its only office in Missouri. **Appeal filed February 23, 1937. Petition for writ of certiorari denied March 29, 1937.**

VIRGINIA. Docket No. 40. *The Atlantic Refining Company v. Commonwealth of Virginia,* 183 S. E. 243. (The Corporation Journal, March, 1936, page 136.) Validity of foreign corporation entrance fee. **Appeal filed April 24, 1936. Jurisdiction postponed to hearing of case on its merits, May 18, 1936. Argument concluded October 22, 1936.**

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* **Data compiled from CCH U. S. Supreme Court Service, 1936-1937.**

Regulations and Rulings

CALIFORNIA—Motor vehicles subject to registration are not subject to local assessment and taxation even though unregistered on the assessment date, the first Monday in March, according to an opinion of the Attorney General to the State Board of Equalization, printed in full text in the California Corporation Tax (CT) Service, page 385-8.

COLORADO—The trucks of a baking company used by the company's salesmen to serve orders taken in advance, but from which goods are also sold to anyone applying without previous order, do not constitute stores within the meaning of Sec. 8 of the Chain Store License Tax Law. (Opinion of Attorney General, reported in the Colorado CT Service, page 7609.)

CONNECTICUT—Recent regulations concerning the non-allowance of the Federal excess-profits tax as a deduction from the income (franchise) tax, the deduction of dividends and the deduction of contributions or gifts by corporations, are printed in the Connecticut CT Service, page 244.

KENTUCKY—Taxes paid other states are not deductible under the income tax law as ordinary and necessary expenses of carrying on business in Kentucky, but are indirectly deducted on the allocation of business done in another state, under a ruling of the Director of the Division of Income Taxation, shown on page 1510 of the Kentucky CT Service.

LOUISIANA—Recently issued Rules of Procedure and Practice before the Louisiana Board of Tax Appeals are printed in the Louisiana CT Service, pages 1301-1317.

The Louisiana luxury or retail sales tax is deductible as a tax for Federal income tax purposes, by the consumer. If, however, the tax is added to or made a part of his business expense, it may not be deducted separately as a tax. (Ruling of the Federal Treasury Department, Bureau of Internal Revenue, I. T. 3042, printed in the Louisiana CT Service, page 6303.)

MINNESOTA—The Federal surtax on undistributed profits and the Federal excess profits tax are deductible only in the year in which paid, and their allocation must be based on the ratio of income of the year for which such taxes are assessed. (Ruling of Minnesota Tax Commission, page 1534, Minnesota CT Service.)

OHIO—Sales made of products manufactured in Ohio, from the company's factories located there, to customers within and outside of Ohio are to be considered Ohio business for the purpose of determining the Ohio franchise tax. (Opinion of Attorney General, Ohio CT Service, pages 273-275.)

TENNESSEE—If a corporation has never deducted premiums upon a policy insuring the life of one of its officers from its net earnings, and has not considered the premiums an operating expense, it is not required to include the proceeds in its net earnings in computing the excise tax. (Ruling of Attorney General, reported in the Tennessee CT Service, page 1552.)

Some Important Matters for May and June

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Notification Service* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details of the Service from any office of The Corporation Trust Company.

ARIZONA—Report to Corporation Commission and Registration Fee due during June.—Domestic and Foreign Corporations.

ARKANSAS—Income Tax Return and Payment due on or before May 15.—Domestic and Foreign Corporations.

DELAWARE—Annual Franchise Tax due between April 1 and July 1.—Domestic Corporations.

DOMINION OF CANADA—Annual Summary due between April 1 and June 1.—Dominion Companies.

FLORIDA—Annual Report and Fee due on or before July 1.—Domestic and Foreign Corporations.

ILLINOIS—Annual Franchise Tax due on or before July 1, but may be paid up to July 31 without penalty.—Domestic and Foreign Corporations.

LOUISIANA—Income Tax Return and Return of Information at the source due on or before May 15.—Domestic and Foreign Corporations.

MAINE—Annual Franchise Tax Return due on or before June 1.—Domestic Corporations.

MISSOURI—Annual Franchise Tax due on or before May 15.—Domestic and Foreign Corporations.

Income Tax due on or before June 1.—Domestic and Foreign Corporations.

MONTANA—Annual Statement due within two months from April 1.—Foreign Corporations.

Annual License Tax based on net income due on or before June 15.—Domestic and Foreign Corporations.

NEBRASKA—Annual Report and Franchise (Occupation) Tax due on or before July 1.—Domestic Corporations.

NEVADA—Annual List of Officers and Designation and Acceptance of Resident Agent due on or before July 1.—Domestic and Foreign Corporations.

NEW JERSEY—Franchise Tax Return and Tax due on or before August 15.—Foreign Corporations.*

NEW MEXICO—Franchise Tax due on or before May 1.—Domestic and Foreign Corporations.

NEW YORK—Annual Franchise (Income) Tax Return (Form 3IT-Article 9-A, Tax Law) and payment of one-half of tax due on or before May 15.—Domestic and Foreign Business Corporations.

NORTH CAROLINA—Annual Franchise Tax Report and Tax due on or before July 31.—Domestic and Foreign Corporations.**

OREGON—Annual Report due during June.—Domestic and Foreign Corporations.

RHODE ISLAND—Corporate Excess Tax due on or before July 1.—Domestic and Foreign Corporations.

TENNESSEE—Annual Privilege (Franchise) Tax Return and Tax (filed with and paid to Commissioner of Finance and Taxation) due on or before July 1.—Domestic and Foreign Corporations.

Annual Report and Franchise Tax (filed with and paid to Secretary of State) due on or before July 1.—Domestic and Foreign Corporations.

Annual Excise Tax due on or before July 1.—Domestic and Foreign Corporations.

UNITED STATES—Second Installment of Income Tax due June 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

VIRGINIA—Income Tax due June 1.—Domestic and Foreign Corporations.

WASHINGTON—License Fee due on or before July 1.—Domestic and Foreign Corporations.

WEST VIRGINIA—License Tax Statement due on or before July 1.—Domestic Corporations.

Annual License Tax due on or before July 1.—Domestic and Foreign Corporations.

Fee to State Auditor as Attorney in Fact due on or before July 1.—Foreign Corporations and those Domestic Corporations whose principal places of business or chief works are located in other states.

WYOMING—Annual Statement and License Tax due on or before July 1.—Domestic and Foreign Corporations.

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* Change in due date effected by Ch. 25, Laws of New Jersey, 1937, which repealed Ch. 264, Laws of 1936, which had provided for the filing of a similar Franchise Tax Return on or before the first Tuesday of May.

** Changes in due dates of report and payment of the tax effected by the 1937 North Carolina Revenue Act.

The Corporation Trust Company's Supplementary Literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets and forms, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York, N. Y.

A Corporation's Achilles Heel. Containing the complete text of the opinion of the Supreme Court of the United States in State of Washington ex rel. Bond & Goodwin & Tucker, Inc. v. Superior Court, State of Washington, and of the Supreme Court of New Mexico in Silva v. Crombie & Co. —two decisions of great significance to attorneys of corporations qualified in one or more states.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation, completely revised to reflect the changes made by the amendments of 1935.

New Deal Laws of Importance to Corporations. Contains complete text of Securities Act of 1933 as amended by Title II of the Securities Exchange Act of 1934, all matters in the original act omitted in the 1934 amendments being set in brackets, and all new matters added by the 1934 amendments being set in italics; complete text of the Securities Exchange Act of 1934; and complete text of the amendments approved June 7, 1934 to the Bankruptcy Act providing for corporate reorganizations.

The New Bankruptcy Law. Contains, first, the eleven-word amendment approved June 18, 1934 to the original amendment to the Bankruptcy Act approved June 7, 1934 (and published in our pamphlet New Deal Laws described above); second, two examples of voluntary petitions for reorganization under the new provisions; and third, two examples of petitions under the new provisions for appointment of trustees (reorganization sought).

The High Cost of Whistles for Corporations. Benjamin Franklin's classic, "The Whistle," here is shown, by the decisions in actual court cases, to have a very pointed application to some of the policies of some business corporations of our own day. A sixteen-page pamphlet for both laymen and lawyers.

Special Report. The Case Against Corporate Representation by Business Employees. Specific experiences of different corporations with the handling by untrained corporate representatives of such matters as service of process, notices of taxes due, filing of corporation reports, etc.

What Constitutes Doing Business. (Revised to April 15, 1934.) A 198-page book containing brief digests of decisions selected from those in the various states, as indicating what is construed in each state as "doing business." The digests are arranged by state, but a Table of Cases and a Topical Index makes them accessible also by either case name or topic. There is also a section containing citations to cases on the question of doing business such as to make the company subject to service of process in the state.

Amateur Corporate Representation. A booklet dealing with some of the weaknesses of placing a company's statutory representation in the hands of business employes or others not trained in the matters involved.

When Corporations Cross the Line. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

Questionnaire on Business Outside State of Organization. This is a Form for attorney's use in determining when a corporation should be qualified. The questions are those which will usually bring out the points necessary to be considered.